IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 34730 of 2007(H)

PETITIONER:

COCHIN MALABAR ESTATES AND INDUSTRIES LTD., DOOR NO.39/4946-A, GROUND FLOOR, NGO UNION OFFICE BUILDING, PALLIMUKKU,KOCHI-682016 REPRESENTED BY ITS EXECUTIVE DIRECTOR, MR. S.D.BHATTAR.

BY ADV. SRI.DEVAN RAMACHANDRAN
SRI.ANEESH.K.M.

RESPONDENTS:
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1. **THE DEPUTY TAHSILDAR (R.R), KANAYANNUR TALUK, ERNAKULAM.**

2. **THE DEPUTY CONSERVATOR OF FOREST, MADIKKERI DIVISION, MADIKERI, KARNATAKA.**

3. **THOMSON PLANTATION (INDIA) PVT. LTD., KANJIRAPPALLY, KOTTAYAM DISTRICT.**

BY GOVERNMENT PLEADER SRI. BEJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

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W.P.(C)No.34730 of 2007

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Dated this the 23rd day of November 2007

JUDGMENT

Properties belonging to the petitioner were brought to sale pursuant to a certificate issued by the Debt Recovery Tribunal in O.A.167/2000. The reserve price in relation to the property was fixed under Ext.P1 proclamation of sale at more than Rs.9 crores. Proclamation also mentioned the known liability to the tune of Rs.97,22,820.64 as on 30.9.2003. Ext.P1 also incorporated a statement giving break up of the known liability under the head of "*Liabilities' as on 30.9.2003 (Provisional)*. *Contingent liability on account of the disputed lease rent payable on Ambadi Estate Land (which was proposed to be brought to sale under Ext.P1 proclamation) to the Karnataka Forest Department".* Statement also included the interest calculated on the said contingent liability. The property in question was purchased in auction by the third respondent. Apparently the Deputy Surveyor of Forests, Madikari Forest Division in Karnataka proceeded to recover the disputed lease rent claimed to be payable to the Karnataka Forest Department under Ext.P2 order dtd.27.3.2000. The liability could

be enforced against the property which was brought to sale. Pursuant to the requisition made by the Forest Department, Karnataka, revenue recovery notice was issued by the Deputy Tahsildar, Kanayannur Taluk as evidenced by Exts.P3 and P4 showing the petitioner as a defaulter. This has been objected to by the petitioner under Ext.P6 submitted before the Tahsildar, Kanayannur Taluk, inter alia pointing out that the property in question, in relation to which the lease rent is claimed by the Forest Department in Karnataka, has been purchased by the third respondent. Apparently, a provision has been made for absorbing the said liability also, in the sale consideration relating to the property and therefore steps may be taken against the purchaser of the property as such. This objection is yet to be looked into by the Tahsildar.

2. After having heard the learned Government Pleader also, the writ petition is disposed of in the following terms:

1) The first respondent before whom Ext.P6 has been submitted, shall forward a copy of Ext.P6 to the District Collector, Ernakulam who will look into the same and taking note of provision in Ext.P1 providing for contingent liability as incorporated in the sale proclamation, take a decision thereon, after hearing the

petitioner and the third respondent. If the petitioner's claim is found to be correct, then appropriate steps may be taken by the District Collector, in that regard, for enforcing the demand as against the person who is liable to pay the amount. I make it clear that any decision that may be taken by the District Collector will be only after hearing the third respondent. Subject to the decision to be taken by the District Collector, in the manner aforementioned, necessary intimation may be given to the second respondent. The entire process may be completed, in this regard, within a period of four months from the date of receipt of a copy of this judgment. Enforcement of Exts.P3 and P4 as against the petitioner shall be kept in abeyance till such a decision is taken.

V.GIRI, JUDGE

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